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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 DAWN M. RAYMOND,

11 Plaintiff,

12 v.

13 JO ANNE B. BARNHART, Commissioner of  
14 Social Security,

15 Defendant.

CASE NO. C05-5581RJB

ORDER ADOPTING REPORT  
AND RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation of the Honorable  
17 J. Kelley Arnold, United States Magistrate Judge (Dkt. 38). The Court has considered the Report  
18 and Recommendation, Defendant's objections (Dkt. 39), Plaintiff's response (Dkt. 40), and the  
19 remainder of the file herein.

20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 On July 15, 2008, the Ninth Circuit U.S. Court of Appeals reversed and remanded this  
22 case, directing that the case be remanded to the Social Security Administration for the ALJ to  
23 hear the testimony of a vocational expert at step five of the sequential evaluation process. Dkt.  
24 30-2. Therefore, on July 16, 2008, the Court remanded this matter to the Social Security  
25 Administration for further proceedings consistent with the decision of the Ninth Circuit. Dkt. 31.

26 On August 9, 2008, Plaintiff's counsel moved for an award of attorneys' fees, and the  
27 motion (Dkt. 32) was referred to the Honorable J. Kelley Arnold, United States Magistrate Judge.  
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1 Dkt. 36. Judge Arnold recommends that the motion be granted. Defendant has objected to the  
2 Report and Recommendation (Dkt. 39), and Plaintiff has responded to Defendant's objections  
3 (Dkt. 40). This matter is now ripe for decision.

## 4 II. DISCUSSION

5 The Equal Access to Justice Act provides that a prevailing party may recover fees and  
6 other expenses as follows:

7 (d)(1)(A) Except as otherwise specifically provided by statute, a court  
8 shall award to a prevailing party other than the United States fees and other  
9 expenses, in addition to any costs awarded pursuant to subsection (a), incurred by  
10 that party in any civil action (other than cases sounding in tort), including  
11 proceedings for judicial review of agency action, brought by or against the United  
12 States in any court having jurisdiction of that action, unless the court finds that  
13 the position of the United States was substantially justified or that special  
14 circumstances make an award unjust.

15 28 U.S.C. § 2412(d)(1)(A). "Substantial justification" requires "a reasonable basis in law and  
16 fact." *Shafer v. Astrue*, 518 F.3d 1067, 1071 (9th Cir. 2008). The government's position must be  
17 "justified in substance or in the main" or "to a degree that could satisfy a reasonable person." but  
18 need not be "justified to a high degree." *Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998).

19 The Report and Recommendation concludes that the motion should be granted. Dkt. 38.  
20 The Report and Recommendation is thorough, well-reasoned, and responsive to the parties'  
21 contentions. The Court should therefore adopt the Report and Recommendation.


## 22 III. ORDER

23 Therefore, it is hereby

24 **ORDERED** that the Court **ADOPTS** the Report and Recommendation (Dkt. 38), and  
25 Plaintiff's Motion for Attorney's Fees, Costs, and Expenses Pursuant to 28 U.S.C. § 2412 is  
26 **GRANTED**. Plaintiff's counsel is awarded attorney's fees in the amount of \$18,737.73, costs in  
27 the sum of \$512.20, and expenses in the sum of \$161.70 pursuant to the Equal Access to Justice  
28 Act, 28 U.S.C. § 2412 and 28 U.S.C. § 1920.

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
2 to any party appearing *pro se* at said party's last known address.

3 DATED this 3<sup>rd</sup> day of November, 2008.

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5 ROBERT J. BRYAN  
6 United States District Judge  
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